1023.

SUPREME COURT OF THE UNITED STATES.

No. 107.

LEWIS CURTIS & GEORGE GRISWOLD, TRUSTEES OF THE APALACHICOLA LAND COMPANY, PLAINTIFFS IN ERROR,

vs.

SARAH A. LINES, EXECUTRIX OF JON'N ROBINSON.

IN ERROR TO THE COURT OF APPEALS FOR THE TERRITORY OF FLORIDA.

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J. & G. S. Gideon, printers.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the court of appeals of the Territory of Florida, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea between Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, plaintiffs, and Sarah A. Lines, executrix of Jonathan Robinson, deceased, defendant, at their January term, 1844, in which judgment was rendered for defendant, a manifest error hath happened to the great damage of the said trustees, as we by their complaint are informed; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-fifth day of [L. S.] April, in the year of our Lord one thousand eight hundred and forty-four, and of the independence of the United States the sixty-eighth year.

R. T. BIRCHETT, *Clerk*,
By N. P. BEMIS, *D. C.*

In accordance with the command of this writ, the annexed record is sent to the Supreme Court.

5 Sept., 1844.

R. T. BIRCHETT, *Clerk*,
By J. T. ARCHER, *D. C.*

Citation.

The United States of America, to Sarah A. Lines, executrix of Jonathan Robinson, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the court of appeals of the Territory of Florida, wherein Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, are plaintiffs, and you are defendant in error, to show cause, if

any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Douglass, judge of the said court of appeals, this 22 day of April, in the year of our Lord one thousand eight hundred and forty-four.

SAM'L JAMES DOUGLAS,
Judge court of Appeals.

Executed by serving Sarah A. Lines with a copy, May 11th, 1844.
ROBERT MYERS, *M.*

Pleas at the court house, in the city of Tallahassee, before the court of appeals of the Territory of Florida, on the fifth day of September, in the year of our Lord one thousand eight hundred and forty-four.

Be it remembered that heretofore, to wit, on the 6th day of December, A. D. 1843, came Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, by Thomas Baltzell, esq., their attorney, and sued out of this honorable court a writ of error to a judgment against them in Gadsden superior court, which is in the words and figures following, to wit:

"In the name and by the authority of the Territory of Florida."

"To the judge of the superior court for the middle district of Florida, Gadsden county, greeting:

Because in the record and proceedings, and also in the rendition of the judgment in our said court, at November term, 1843, on the twenty-ninth day of November, in the year 1843, in a certain action in the case upon promises, instituted in our said court against Sarah Lines, executrix of Jonathan Robinson, deceased, by Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, manifest error hath happened to the great damage of the said Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, as by their complaint we have understood; we being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the said Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, in this behalf, command you, that the record and proceedings aforesaid, with all things touching the same, you, under your seal, distinctly and plainly, send to the judges of our court of appeals, at the city of Tallahassee, on or before the first day of the next term, so that the judges, the record and proceedings aforesaid being inspected, may further cause to be done therein what of right and according to law ought to be done.

Witness the honorable William Marvin, presiding judge of our said court of appeals, at Tallahassee, this 6th day of December,
[L. S.] 1843, and the 68th year of American independence.
R. T. BIRCHETT, *Clerk.*

Endorsed—"Came to hand December 6th, 1843, and served a copy thereof, December 6th, 1843, on said Sarah Lines, and read the same to her personally, and delivered the original to Isaac R. Harris, esq., clerk of Gadsden county superior court.

J. G. CAMP, *M.*
By J. W. POINDEXTER, *D. M.*

And on the same day, to wit, on the 6th day of December, 1843, a scire facias ad audiendum errors, directed to the marshal to be served on the defendant in error, was issued from said court of appeals, in the words and figures following, to wit:

The territory of Florida, to the marshal of the court of appeals, greeting:

Whereas, on the petition of Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, plaintiffs in error, alleging that, in the record and proceedings, and also in the rendering of the judgment in a certain action on the case upon promises, instituted in our said court for the middle district of Florida, in and for the county of Gadsden, against said Sarah Lines, executrix of Jonathan Robinson, deceased, by said Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, manifest error hath happened to the great damage of the said Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, a writ of error hath been awarded; that the record and proceedings aforesaid being inspected by the judges of our court of appeals, they may cause to be done therein, to correct that error, what of right and according to law ought to be done. Therefore, we command you that you make known to the said Sarah Lines, executrix of Jonathan Robinson, deceased, that she be before the judges of our said court of appeals, at the court house in the city of Tallahassee, on the first Monday in January next, then and there to hear the record and proceedings aforesaid, and the errors assigned, if to her it shall seem expedient; and further to do and receive what our said court shall in that part consider, and have then and there this writ.

Witness the honorable William Marvin, presiding judge of our said court of appeals, at Tallahassee, this 6th day of December, [L. S.] 1843, and the 68th year of American independence.

R. T. BIRCHETT, *Clerk.*

Endorsed—Came to hand Dec. 6, 1843, and served Dec. 6, 1843, by reading and by delivering a copy thereof to said Sarah Lines, personally.

J. G. CAMP, *M.*
By J. W. POINDEXTER, *D. M.*

And afterwards, to wit, on the 28th day of December, 1843, came the said plaintiffs in error, by their said attorney, and filed in this court the record of the proceedings of the judgment of Gadsden superior court, certified by the clerk of said court, and sent up to this court in obedience to the mandate in said writ of error contained; which record is in the words and figures following, to wit:

LEWIS CURTIS AND GEORGE GRISWOLD, trustees of the Apalachicola Land Company,
vs.
SARAH A. LINES, executrix of Jonathan Robinson.

Pleas before the honorable Samuel James Douglas, judge of the superior court of law for the district of Middle Florida, Gadsden county, at the regular November term, 1843.

Be it remembered that heretofore, to wit, on the 29th day of April, 1842, came Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, by their attorney Thomas Baltzell, and filed their præcipe, which is [in the] words following, to wit:

GEORGE GRISWOLD AND LEWIS CURTIS, trustees of the Apalachicola Land Company,
vs.
SARAH A. LINES, administratrix of Jonathan Robinson, deceased.

Action on the case upon promises, to plaintiffs' damage $10,000.

And on the same day, to wit, the 29th of April, 1842, a summons ad respondendum was issued in said case; which summons, with the endorsements and return thereon made, is in words and figures following, to wit:

In the name and by the authority of the Territory of Florida—to the marshal of the middle district, greeting:

We command you to summons Sarah A. Lines, administratrix of Jonathan Robinson, deceased, if she be found within the county of Gadsden, personally to be and appear before the judge of our superior court for said county, district aforesaid, at the court house in the town of Quincy, on the second Monday in May next, being the first day of our next term, to answer George Griswold and Lewis Curtis, trustees of the Apalachicola Land Company, in an action on the case upon promises, to their damage ten thousand dollars; and have then and there this writ.

Witness Isaac R. Harris, clerk of our said court, this 29th day of April, A. D. 1842, and sixty-sixth year of American independence.

I. R. HARRIS, *Clerk.*

Endorsed—Came to hand April 29, 1842; executed April 29th, by serving a copy on S. A. Lines.

J. G. CAMP, *M.*
By C. M. HARRIS, *D. M.*

Endorsed—Filed 30th April, 1843.

I. R. HARRIS, *Clerk.*

Afterwards, to wit, on the 11th day of May, 1842, the said plaintiffs

by their attorney filed their declaration, which is in words and figures following, to wit:

TERRITORY OF FLORIDA,
Middle district, Gadsden superior court,
Spring term, 1842.

Gadsden county, to wit:

Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, complain of Sarah A. Lines, of said county, executrix of the estate of Jonathan Robinson, deceased, who was summoned to answer them of a plea of trespass on the case upon promises, &c., &c. For that whereas the said Jonathan Robinson, in his lifetime, to wit, on the seventeenth day of March, eighteen hundred and thirty-seven, at Wildwood, at the county aforesaid, made his certain promissory note in writing, bearing date the same day and year aforesaid, and thereby then and there promised to pay, one year after the date thereof, to the order of Louis McLane, Joseph M. White, and Charles A. Davis, trustees of the Apalachicola Land Company, their successors or order, the sum of two thousand three hundred and sixteen $\frac{95}{100}$ dollars, value received, with interest at and after the rate of (8) eight per cent. per annum; and the said plaintiffs say in fact, that they are now the trustees of the said company, being the successors of the said White, McLane and Davis, and as such are entitled to receive the said money from the said defendant; by means whereof, and by force of the statute in such case made and provided, the said Jonathan Robinson, in his lifetime, then and there became liable to pay to the said plaintiffs the said sum in the said promissory note specified, according to the tenor and effect of the said promissory note; and being so liable the said Jonathan Robinson, in his lifetime, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then *and then* and there faithfully promised the said plaintiffs, to pay them the said sum of money in said promissory note specified, according to the tenor and effect thereof.

And whereas also the said Jonathan Robinson, deceased, in his lifetime, to wit, on the day and year aforesaid, made his certain other promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised, two years after date thereof, to pay to the order of Louis McLane, Joseph M. White, and Charles A. Davis, trustees of the Apalachicola Land Company, their successors or order, two thousand three hundred and sixteen $\frac{95}{100}$ dollars, value received, with interest at and after the rate of eight per cent. per annum; and the said plaintiffs aver, and in fact say, that they are now the trustees of said company, being the successors of said McLane, White, and Davis, as trustees of said company, and as such are entitled to have and receive the said money from the said defendant. By means whereof, and by force of the statute in such case made and provided, the said Jonathan Robinson, in his lifetime, then and there became liable to pay to the said plaintiffs the said sum of money in the said promissory note speci-

fied, according to the tenor and effect of said promissory note; and being so liable, the said Jonathan Robinson in his lifetime, in consideration thereof afterwards, to wit, on the day and year last aforesaid, at the place aforesaid, undertook, and thereby then and there faithfully promised the said plaintiffs to pay them the said sum of money in said promissory note specified, according to the tenor and effect thereof.

And whereas also the said Jonathan Robinson, deceased, in his lifetime, afterwards, to wit, on the first day of April, eighteen hundred and thirty-seven, at the place aforesaid, was indebted to the said plaintiffs in the sum of ten thousand dollars, lawful money of the United States, for money before that time lent and advanced by the said plaintiffs to the said Jonathan, and at the special instance and request of said Jonathan; and for other money by the said plaintiffs before that time paid, laid out, and expended, for the said Jonathan, and at the like request of the said Jonathan; and for other money by the said Jonathan before that time had and received to and for the use of the said plaintiffs. And being so indebted the said Jonathan afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when the said Jonathan should be thereunto afterwards requested. And whereas also the said Jonathan afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said Jonathan to the said plaintiffs, and then and there being in arrear and unpaid; and upon such accounting the said Jonathan then and there was found to be in arrear and indebted to said plaintiffs in the further sum of ten thousand dollars of like lawful money as aforesaid. And being so found in arrear and indebted to said plaintiffs, the said Jonathan, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said Jonathan should be thereunto afterwards requested.

And whereas also the said defendant, as administratrix as aforesaid, afterwards, to wit, on the first day of March, eighteen hundred and forty-two, at the place aforesaid, accounted with the said plaintiffs of and concerning divers other sums of money from the said Jonathan in his lifetime, and at the time of accounting to the said plaintiffs due and owing, and then in arrear and unpaid, and upon that accounting the said Jonathan in his lifetime, and at the time of his death, was found to be in arrear and indebted to the said plaintiffs in the further sum of ten thousand dollars of like lawful money [as aforesaid] of the United States; and being so found in arrear and indebted, and the said last mentioned sum of money being and remaining wholly unpaid, she, the said defendant, as administratrix as aforesaid, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay

them the said sum of money last mentioned, whenever afterwards she, the said defendant as [*should be thereunto*] administratrix as aforesaid, should be thereunto requested.

And the said plaintiffs aver, and in fact say, that the said McLane, White and Davis, have assigned to them as successors of the said McLane, White and Davis, as trustees of the said company, the promissory notes in the first count above mentioned. And the said plaintiffs also aver, and in fact say, that the said McLane, White and Davis have assigned to them as successors to the said McLane, White and Davis, as trustees of the Apalachicola Land Company, the second promissory note in the second count above mentioned.

Yet the said Jonathan in his lifetime, and the said defendant after his death, administratrix as aforesaid, not regarding his said several promises and undertakings so by him in manner and form aforesaid made, did not pay the said several sums of money in the said counts mentioned, or any or either of them, or any part thereof, to the said plaintiffs, although often requested so to do; but to pay the same, or any part thereof, he, the said Jonathan, did wholly refuse, and the said defendant hath hitherto wholly refused.

And the said defendant as administratrix as aforesaid, not regarding her several promises and undertakings so by her in manner and form aforesaid made, hath not yet paid the several sums of money in the said counts mentioned, or any or either of them, or any part thereof, to the said plaintiffs, (although often requested so to do,) but the said defendant, as administratrix as aforesaid, to pay the same, or any part thereof, hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiffs of ten thousand dollars; and therefore they bring their suit, &c.

THOMAS BALTZELL,
Plaintiffs' attorney.

[Copy of notes annexed to declaration.]

(*Copy of notes.*)

2,316 95. WILDWOOD, *Florida, March* 17, 1837.

One year after date I promise to pay to the order of Louis McLane, Joseph M. White, and Charles A. Davis, trustees of the Apalachicola Land Company, their successors or order, two thousand three hundred and sixteen $\frac{95}{100}$ dollars, value received, with interest at and after the rate of eight per cent. per annum.

(Signed,) JONA. ROBINSON.

2,316 95. WILDWOOD, *Florida, March* 17, 1837.

Two years after date I promise to pay to the order of Louis McLane, Joseph M. White, and Charles A. Davis, trustees of the Apalachicola Land Company, their successors, or order, two thousand three hundred and sixteen $\frac{95}{100}$ dollars, value received, with interest at and after the rate of eight per cent. per annum.

(Signed) JONA. ROBINSON.

[Copy of the original notes filed in said cause with the endorsements thereon.]

$2,316 $\frac{95}{100}$. WILDWOOD, FLORIDA, *March* 17, 1837.

One year after date I promise to pay to the order of Louis McLane, Joseph M. White and Charles A. Davis, trustees of the Apalachicola Land Company, their successors, or order, two thousand three hundred and sixteen $\frac{95}{100}$ dollars, value received, with interest at and after the rate of eight per centum per annum.

JONA. ROBINSON.

Endorsed.—"Pay to the order of Lewis Curtis and George Griswold, trustees.

LOUIS McLANE,
CH. AUG. DAVIS,
Trustees.

"Pay John Williams, esq., cashier, or order.

LEWIS CURTIS,
GEORGE GRISWOLD,
Trustees.
By their att'y GEO. FIELD, *Pres't.*"

$1,000. TALLAHASSEE, *June* 5, 1840.

Received one thousand dollars in Union Bank notes by the hand of J. A. Berthelot, of the within note.

J. WILLIAMS, *Cash.*

$2,316 $\frac{95}{100}$. WILDWOOD, FLORIDA, *March* 17, 1837.

Two years after date I promise to pay to the order of Louis McLane, Joseph M. White and Charles A. Davis, trustees of the Apalachicola Land Company, their successors, or order, two thousand three hundred and sixteen $\frac{95}{100}$ dollars, value rec'd, with interest at and after the rate of eight per cent. per annum.

JONA. ROBINSON.

Protested for non-payment 20 March, 1839.
GEO. FIELD, *Not. Pub.*

Endorsed.—Pay to the order of Lewis Curtis and George Griswold, trustees.

LOUIS McLANE,
CH. AUG. DAVIS,
Trustees.

Pay to the order of Geo. Field, cash'r.

LEWIS CURTIS,
GEO. GRISWOLD,
Trustees.

Pay John Williams, esq., cashier, or order.
GEO. FIELD, *Pres't.*

Afterwards, to wit, at the regular fall term, 1842, of said court, to

wit, on the 2d Dec'r, 1842, the following entry was made of record in said cause, to wit:

CURTIS & GRISWOLD, trustees of the Apalachicola Land Company, pl'ffs,
vs.
SARAH LINES, admx., &c., def't.

On motion of pl'ffs' attorney, it is ordered that this case be continued until the next term of this court, with leave to amend his declaration herein filed.

Afterwards, to wit, on the 6th day of February, 1843, the defendant, by her attorney, filed the following pleas in said case, viz:

SARAH LINES, admx.
vs.
LEWIS CURTIS & GEORGE GRISWOLD, trustees of Apalachicola Land Co.

District of Middle Florida, Gadsden superior court, vacation after May term, 1842.

1. And said defendant by her attorney comes and defends the wrong and injury, when, &c., and says the said Jonathan Robinson in his lifetime did not undertake and promise, nor did said defendants undertake and promise, in manner and form as said plaintiff hath above thereof complained against her; and of this she puts herself upon the country.

And plaintiff doth the like.

And for further plea in this behalf, the said defendant saith, that said plaintiff ought not to have and maintain their action aforesaid against said defendant, because she saith she is not, nor hath she ever been, administratrix of the goods and chattels, rights and credits, which were of the said Jonathan Robinson, deceased, in manner and form as the said plaintiffs have in their said declaration above thereof alleged against her, but that she, the said defendant, is now, and always hath been, the executrix of the last will and testament of the said Jonathan Robinson, and this she is ready to verify; wherefore she prays judgment of the said plaintiffs' writ and declaration, and that the same may be quashed. [This plea stricken out by consent of parties, May 9, 1843, and declaration amended.]

2. And for further plea in this behalf said defendant saith, that plaintiffs ought not further to have and maintain their aforesaid action thereof against [her,] because she says the promissory notes described in plaintiffs' declaration, and which constitute the foundation of the plaintiffs' demand, were given to secure the part payment of the purchase money of a tract of land sold by the Apalachicola Land Company to said Robinson, and in consideration of the execution and delivery by the said Robinson of the said notes; and also the payment in hand of four thousand dollars by said Robinson to said land co., the said Apalachicola Land Co., by one R. M. Blatchford, describing himself as president of

the board of trustees, executed and delivered to said Robinson an agreement in writing, bearing date the seventeenth day of March, 1837, specifying that upon the payment of said purchase money by said Robinson, the said Apalachicola Land Co. would make, or cause to be made, to said Robinson, his heirs or assigns, good and sufficient title to said tract of land; and the said defendant avers, that at the time the said Apalachicola Land Company entered into said agreement with said Robinson, for the sale and purchase of said tract of land, there were and still are heavy incumbrances against the title of said land company to said land, which said incumbrances have not, up to the present time, been removed; and for this cause the said co. were at the time of the making of said agreement, and up to the time of filing this plea, unable to make, or cause to be made, to said Robinson or his assigns, good and sufficient titles to said tract of land, as specified and stipulated in said agreement in writing, and this she is ready to verify; wherefore she prays judgment if the said plaintiffs ought to have and maintain their aforesaid action thereof against her.

3. And for further plea in this behalf, the said defendant saith, that plaintiffs ought not to have and maintain their aforesaid action thereof against said defendant, because she saith the said Apalachicola Land Co. had not, at the time of entering into said contract or agreement with said Robinson, nor had they at any time since up to the commencement of this suit, such a title to said tract of land as would enable them to perfect unto the said Robinson, his heirs or assigns, a good and sufficient title to said land, according to the stipulations contained in said written agreement, and this she is ready to verify; wherefore she prays judgment if the said plaintiffs ought further to have and maintain their aforesaid action thereof against said defendant.

4. And for further plea in this behalf said defendant saith, that said plaintiffs ought not further to have and maintain their aforesaid action against said defendant, because she saith that there was no consideration given for the notes which are the foundation of the plaintiffs' suit as aforesaid, and this she is ready to verify; wherefore she prays judgment if the said plaintiffs ought further to have and maintain their action aforesaid against said defendant.

5. And for further plea in this behalf said defendant saith, plaintiffs ought not to have and maintain their action aforesaid against said defendant, because she saith that the consideration for which the notes are given, and which notes constitute the ground of this action, have entirely failed, and this she is ready to verify; wherefore she prays judgment if the said plaintiffs ought further to have and maintain their aforesaid action thereof against said defendant.

STEPHENS & BAKER,
Att'y for def't.

Afterwards, to wit, on the first day of April, 1843, the said plaintiffs, by their attorney, filed in said case their amended declaration, which is in words following:

LEWIS CURTIS & GEORGE GRISWOLD, trustees of the Apalachicola Land Company,
vs.
SARAH A. LINES, Executrix of the last will of Jonathan Robinson, deceased.

Amendment of declaration by leave of the court.

And said plaintiffs, by leave of the court in this case first had and obtained, further say, that the said Jonathan Robinson in his lifetime, to wit, on the seventeenth day of March, in the year eighteen hundred and thirty-seven, at Wildwood, that is to say at the county aforesaid, made his certain other promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised, one year after the date thereof, to pay to the order of Louis McLane, Joseph M. White and Charles A. Davis, trustees of the Apalachicola Land Company, their successors, or order, two thousand three hundred and sixteen $\frac{95}{100}$ dollars, value received, with interest at and after the rate of eight per centum per annum, and then and there delivered the said note to the said McLane, White and Davis, and the said McLane and Davis, surviving trustees of said company, (the said White being dead,) to whom or to whose order the payment of the said sum of money in the said note specified was to be made, after the making of said promissory note, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, and at the place aforesaid, endorsed the said promissory note, by which said endorsement the said McLane, White and Davis, trustees as aforesaid, ordered and appointed the said sum of money in the said promissory note specified to be paid to the said plaintiffs, and then and there delivered the said promissory note so endorsed to the said plaintiffs. By means whereof, and by force of the statute in such case made and provided, the said Robinson, in his lifetime, then and there became liable to pay to the said plaintiffs the said sum of money in the said promissory note specified, according to the tenor and effect of the said note; and being so liable in his lifetime, the said Robinson in consideration thereof, afterwards, to wit, on the day and year aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff the said sum of money in the said note specified, according to the tenor and effect thereof; yet the said Robinson, in his lifetime, and the said defendant as administratrix as aforesaid, after the death of the said Robinson, have not, nor have either of them, as yet paid the said sum of money in the said note specified, (although often requested so to do;) but to pay the same, or any part thereof, to the said plaintiffs, the said Robinson in his lifetime wholly refused, and the said defendant, as administratrix as aforesaid, hath ever since the death of the said Robinson hitherto wholly refused and still refuses to do so.

And said plaintiffs further say, that said Robinson in his lifetime, to wit, on the seventeenth day of March, in the year one thousand eight hundred and thirty-seven, made his certain other promissory note in

writing, bearing date the day and year aforesaid, and thereby then and there promised, two years after the date thereof, to pay to the order of Louis McLane, Joseph M. White, and Charles A. Davis, trustees of the Apalachicola Land Company, their successors or order, two thousand three hundred and sixteen $\frac{95}{100}$ dollars, value received, with interest at and after the rate of eight per cent. per annum, and then and there delivered the said note to the said McLane, White and Davis; and the said McLane and Davis, surviving trustees of said company, (the said White being dead,) to whom or to whose order the payment of the said sum of money in the said note specified was to be made, after the making of said note, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, and at the place aforesaid, endorsed the said note, by which said endorsement the said McLane and Davis, trustees as aforesaid, ordered and appointed the said sum of money in the said note specified to be paid to the said plaintiffs; and then and there delivered the said note, so endorsed as aforesaid, to the said plaintiffs; by means whereof, and by force of the statute in such case made and provided, the said Robinson then and there became liable to pay to the said plaintiffs the said sum of money in the said note specified according to the tenor and effect thereof; and being so liable the said Robinson, in consideration thereof afterwards, to wit, on the day and year aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said sum of the said note specified, according to the tenor and effect thereof; and being so liable the said Robinson, in consideration thereof, afterwards, to wit, on the day and year aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay them the said sum of the said note specified, according to the tenor and effect thereof. Yet the said Robinson in his lifetime, and the said defendant, administratrix as aforesaid, after the death of the said Robinson, have not, nor hath either of them, as yet paid the said sum of money in the said note specified. But to pay the same, or any part thereof, the said Robinson in his lifetime refused, and the said defendant, administratrix as aforesaid, hath ever since the death of said Robinson hitherto wholly refused, and still refuses, to do so.

By reason whereof, and according to the usage and custom of merchants, the said defendant then and there became liable to pay to the said plaintiffs the said sum of money in the said bill of exchange specified when the said defendant should be thereunto afterwards requested; and being so liable the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay unto the said plaintiffs the said sum of money in the said bill of exchange specified, when the said defendant should be thereunto requested.

And whereas also the said defendant afterwards, to wit, on the first day of March, in the year one thousand eight hundred and forty-three, at the place aforesaid, was indebted to said plaintiffs in the sum of

lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to said defendant, and at the special instance and request of said defendant; and for other money by said plaintiffs before that time paid, laid out and expended for the said defendant, and at the like request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there found to be in arrear and indebted to the said plaintiffs in the further sum of dollars of like lawful money as aforesaid, and being so found in arrear and indebted to the said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant, (although often requested, &c.,) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same, or any part thereof, to the said plaintiffs, the said defendant has hitherto wholly refused, and still does refuse, to the damage of the said plaintiffs of dollars; and therefore the said plaintiffs bring suit, &c.

Afterwards, to wit, at the regular May term, 1843, of said court, to wit, the 13th May, 1843, the following entry was made of record in said case, viz:

THE APALACHICOLA LAND COMPANY,
vs.
SARAH A. LINES, administratrix, &c.

By consent of parties, by their attorneys, it is ordered that this case be continued until the next term of this court.

Afterwards, to wit, on the 8th day of July, 1843, the said defendant, by her attorneys, filed the following pleas in said case:

Territory of Florida, Gadsden county superior court, after Spring term, 1843.

SARAH A. LINES, administratrix,
vs.
LEWIS CURTIS AND GEORGE GRISWOLD, trustees of the Apalachicola Land Company.

And for further plea in this behalf the said defendant, by leave of the court first had and obtained, comes and defends the wrong and injury, when, &c., and says the plaintiffs ought not further to have and maintain their aforesaid action thereof against her, because she says the promissory notes in plaintiffs' declaration described were given to secure the payment of a part of the purchase money of certain tracts of land sold by the Apalachicola Land Company to said Jonathan Robinson in his lifetime, by virtue of an agreement in writing, made and entered into between the said Jonathan Robinson and the said Apalachicola Land Company, on the seventeenth day of March, eighteen hundred and thirty-seven, which said agreement is in the words following, viz:

"TERRITORY OF FLORIDA,
Gadsden county, to wit:

This is to certify, that Jonathan Robinson has this day purchased of the Apalachicola Land Company lots numbered (14) fourteen and 16 (sixteen,) in the Little River survey of the tract of land known as Forbes' Purchase; said lot number 14 containing four hundred and seventy-four acres, and lot number 16 containing three hundred and two acres and one-half, or thereabouts, be the same more or less, at the price of eight thousand six hundred and thirty-three dollars and ninety cents; and that he has paid to the said Apalachicola Land Company the sum of four thousand dollars. Now the said company do hereby bind themselves to make, or cause to be made, good and sufficient title for the said lots or parcels of land to the said Jonathan Robinson, his heirs or assigns, upon the payment of two thousand three hundred and sixteen dollars and ninety-five cents, on the seventeenth day of March, eighteen hundred and thirty-eight, and the sum of two thousand three hundred and sixteen dollars and ninety-five cents, on the seventeenth day of March, eighteen hundred and thirty-nine, with interest from date, at eight per cent. per annum, for which he has this day given his notes to the trustees of said company; and it is further agreed and understood, that if the said Jonathan Robinson shall desire to pay said notes, or either of them, before they arrive at maturity, he shall be at liberty to do so, and that interest thereon shall cease from the time he shall so pay the same.

In witness whereof the president of the board of directors of said company has in their behalf executed these presents, and the said Jonathan Robinson *Robinson* has also executed the same. Done the seventeenth day of March, one thousand eight hundred and thirty-seven.

R. M. BLATCHFORD,
President of the board of directors.

And the said defendant avers, that at the time of the making of said agreement between said Jonathan Robinson and the Apalachicola Land Company, the said Apalachicola Land Company were not, nor are they now, possessed of a good and sufficient title to said tracts of land, nor can they make such title to said defendant, or to the heirs or assigns of said Jonathan Robinson, because there was at the time of the making of said agreement as aforesaid, and is now, a heavy incumbrance hanging over and upon said tract of land, and against the title of the said Apalachicola Land Company to said tract of land, to wit, a mortgage, purporting to be made on the 9th day of October, 1819, between one Colin Mitchell, of the Island of Cuba, of the first part, John Carnochan, of Savannah, in Georgia, in the United States, (at the time of the making of said mortgage in Liverpool, in the county palatine of Lancaster, in that part of the United Kingdom of Great Britain and Ireland called England,) and Peter Mitchell, of the same place, merchants and partners of the second part, William Christie, of Liverpool aforesaid, merchant, of the third part, and Inmer, of Charleston, in South Carolina, at present also in Liverpool aforesaid, merchant, of the fourth part; said mortgage being given, as therein expressed, to secure a debt due from the said John Carnochan and Peter Mitchel to the said William Christie, amounting to the sum of thirty-five thousand and sixty pounds; also to secure the payment of certain bills of exchange paid by said Christie for said Carnochan and Mitchel, amounting to eight thousand two hundred and twenty-nine [pounds] six shillings and four pence; and also to secure any other advances that he, the said William Christie, might make to said Carnochan and Mitchell, with interest. The said Carnochan and Mitchel thereby and therein conveying, for the purpose aforesaid, to the parties as aforesaid, six hundred thousand acres of land, being part and parcel undivided of the said tract of land known as Forbes' Purchase as aforesaid; which said incumbrance was not at the time of the making of the agreement aforesaid, nor is the same at this time satisfied, paid off, or liquidated; and this she is ready to verify. Wherefore she prays judgment if the said plaintiffs ought further to have and maintain their aforesaid action thereof against her, &c.

STEPHENS & BAKER, *Attorneys.*

And for further plea in this behalf the said defendant, by leave of the court first had and obtained, comes and defends the wrong and injury, when, &c., and says the plaintiffs ought not further to have and maintain their aforesaid action thereof against said defendant, because she says the promissory notes in plaintiffs' declaration mentioned, if any such were made, were given to secure the payment of part of the purchase money of certain tracts of land sold by said Apalachicola Land Company, (being part and parcel of a certain tract of land commonly called and known as Forbes' purchase,) to said Jonathan Robinson, in his lifetime, by virtue of an agreement in writing, made and entered into between the said Jonathan Robinson, in his lifetime, and the said Apalachicola Land Company, on the seventeenth day of March, eighteen

hundred and thirty-seven, which said agreement is in the words following, namely:

TERRITORY OF FLORIDA,
Gadsden county, to wit:

This is to certify, that Jonathan Robinson has this day purchased of the Apalachicola Land Company lots numbered (14) fourteen and 16 (sixteen,) in the Little River survey of the tract of land known as Forbes' Purchase; said lot No. 14 containing four hundred and seventy-four acres, and lot No. 16 containing three hundred and two acres and one-half, or thereabouts, be the same more or less, at the price of eight thousand six hundred and thirty-three dollars and ninety cents; and that he has paid to the said Apalachicola Land Company the sum of four thousand dollars. Now the said company do hereby bind themselves to make, or cause to be made, good and sufficient titles for the said lots or parcels of land to the said Jonathan Robinson, his heirs or assigns, upon the payment of two thousand three hundred and sixteen dollars and ninety-five cents on the seventeenth day of March, eighteen hundred and thirty-eight, and the sum of two thousand three hundred and sixteen dollars and ninety-five cents on the seventeenth day of March, eighteen hundred and thirty-nine, with interest from date at eight per cent. per annum, for which he has this day given his notes to the trustees of said company. And it is further agreed and understood, that if the said Jonathan Robinson shall desire to pay said notes, or either of them, before they arrive at maturity, he shall be at liberty to do so, and that interest thereon shall cease from the time he shall so pay the same.

In witness whereof the president of the board of directors of said company has in their behalf executed these presents, and the said Jonathan Robinson *Robinson* hath also executed the same. Done the seventeenth day of March, one thousand eight hundred and thirty-seven.

R. M. BLATCHFORD,
President of the board of directors.

And the said defendants aver, that at the time of the making of said agreement between the said Jonathan and the said Apalachicola Land Company, the said Apalachicola Land Company were not, nor are they now, possessed of a good and sufficient title to said tracts of land, nor can they make such title to said defendant, or to the heirs and assigns of said Jonathan Robinson, because there was at the time of the making of said agreement as aforesaid, and is now, a heavy incumbrance hanging over and upon said tracts of land, and against the title of said Apalachicola Land Company to said tract of land, to wit, a mortgage, purporting to be made on the thirteenth day of September, eighteen hundred and twenty-eight, between one John Carnochan and his wife, of Gadsden county, in the Territory of Florida, merchant, of the first part, and Isaac Wright and Jonathan Ogden, of the city and State of New York, merchants; by which the party of the first part conveys to the party of the second part all of the undivided estate, right, title, interest, property, possession, claim and demand of said John Carnochan

to the said tract of land so called Forbes' Purchase as aforesaid, to secure to the said Isaac Wright and his son, of New York city, the payment of the sum of twelve thousand three hundred and fifty dollars, and to Ogden, Day & Company, of the same place, the sum of thirty-six thousand seven hundred and thirty-seven dollars and thirty-two cents; and to William Christie and to George Buchanan, of Savannah, in the State of Georgia, the Bank of the United States, the Planters' Bank, the Bank of Darien, and Bank of Georgia, and various other persons not enumerated, in divers sums of money not mentioned; which said mortgage was not at the time of entering into said agreement satisfied, paid off, or in any manner liquidated, nor is the same at this time satisfied, paid off, or in any manner liquidated; and this she is ready to verify. Wherefore she prays judgment if the said plaintiff ought further to have or maintain their aforesaid action thereof against her.

STEPHENS & BAKER.

And for further plea in this behalf the said defendant, by leave of the court first had and obtained, comes and defends the wrong and injury, when, &c., and says the plaintiffs ought not further to have and maintain their aforesaid action thereof against said defendant, because she says the promissory notes in plaintiffs' declaration mentioned, if any such were made, were given to secure the payment of a part of the purchase money of certain tracts of land, (the same being part and parcel of a certain tract of land known and commonly called Forbes' Purchase,) sold by said Apalachicola Land Company to said Jonathan Robinson in his lifetime, by virtue of an agreement in writing, made and entered into between the said Jonathan Robinson and the said Apalachicola Land Company, on the seventeenth day of March, eighteen hundred and thirty-seven, which said agreement is in the words and figures following, (viz.) namely:

"TERRITORY OF FLORIDA,
Gadsden county, to wit:

This is to certify, that Jonathan Robinson has this day purchased of the Apalachicola Land Company lots numbered 14, fourteen, and 16, sixteen, in the Little River survey of the tract of land known as Forbes' Purchase; said lot number fourteen containing four hundred and seventy-four acres, and lot number 16 containing three hundred and two acres and a half, or thereabouts, be the same more or less, at the price of eight thousand six hundred and thirty-three dollars and ninety cents; and that he has paid to the Apalachicola Land Company the sum of four thousand dollars. Now the said company do hereby bind themselves to make or cause to be made good and sufficient titles for the said lots or parcels of land, to the said Jonathan Robinson, his heirs or assigns, upon the payment of two thousand three hundred and sixteen dollars and ninety-five cents on the seventeenth day of March, eighteen hundred and thirty-eight, and the sum of two thousand three hundred and sixteen dollars and ninety-five cents on the seventeenth day of March, eighteen hundred and thirty-nine, with interest from date at eight per cent. per

annum, for which he has this day given his notes to the trustees of said company; and it is further agreed and understood that if the said Jonathan Robinson shall desire to pay said notes, or either of them, before they arrive at maturity, he shall be at liberty to do so, and that interest thereon shall cease from the time he shall so pay the same.

In witness whereof the president of the board of directors of said company has in their behalf executed these presents, and the said Jonathan Robinson *Robinson* has also executed the same. Done the seventeenth day of March, one thousand eight hundred and thirty-seven.

R. M. BLATCHFORD,
President of the board of directors.

And said defendant avers, that at the time of the making of said agreement between the said Jonathan Robinson and the said Apalachicola Land Company, the said Apalachicola Land Company were not, nor are they now, possessed of a good and sufficient title to said tract of land, nor can they make such title to said defendant, or to the heirs and assigns of said Jonathan Robinson, because there was at the time of the making of said agreement as aforesaid, and is now, a heavy incumbrance hanging over and upon said tract of land, and against the title of the said Apalachicola Land Company to said tract of land, namely, a mortgage or indenture, made the tenth day of June, in the year eighteen hundred and twenty-nine, purporting to be made between one Benjamin W. Rogers, of the city of New York, of the first part, Samuel M. Hopkins, of Albany, in the State of New York, Eliphalet Williams, of Northampton, in Massachusetts, and Jeremiah H. Taylor, of New York, of the second part, Archibald Rogers, John Smyth Rogers, and Samuel Rogers, three of the executors of Moses Rogers, deceased, and Charles H. Langdon Elwyn, of Philadelphia, which recites that the party of the first part is or may become indebted to the said Archibald Rogers by reason of certain existing responsibilities, and for which it is his duty to provide; and also that he is indebted to the said Eliphalet Williams on bond in the sum of seven thousand dollars, with interest, and to the estate of Moses Rogers on account of money received, with interest, and may be further indebted to the said Moses Rogers by means of existing responsibilities, and is or may be indebted to the estate of Thomas Langdon Elwyn, esquire, on account of money received, with interest; some of which responsibilities have not yet become fixed, and the amount of some of which debts is not yet ascertained; which said mortgage conveys to the grantees therein seven two hundred and fortieth ($7\frac{240}{1000}$th) undivided parts, supposed to be thirty-five thousand acres of land, being part of a certain ninety-two hundred and fortieth (9240th) part of said tract of land known as aforesaid as Forbes' Purchase; and the defendant avers, that the said mortgage incumbrance has never been satisfied, paid off, or in any manner liquidated; and this she is ready to verify.

Wherefore she prays judgment if plaintiffs ought further to have and maintain their aforesaid action thereof against her.

STEPHENS & BAKER.

And for further plea in this behalf the said defendant, by leave of the court first had and obtained, comes and defends the wrong and injury, when, &c., and says the plaintiffs ought not further to have and maintain their aforesaid action thereof against her, said defendant, because she says the promissory notes in plaintiffs' declaration described, if any such were given or made, were given to secure the payment of a part of the purchase money of certain tracts of land, (being part of a tract of land commonly known as Forbes' Purchase,) sold by the said Apalachicola Land [Company] to said Jonathan Robinson, by virtue of an agreement in writing, made and entered into between the said Jonathan Robinson and the said Apalachicola Land Company on the seventeenth day of March, eighteen hundred and thirty-seven, which said agreement is in the words and figures following, namely:

"TERRITORY OF FLORIDA,
Gadsden county, set:

This is to certify, that Jonathan Robinson has this day purchased of the Apalachicola Land Company lots numbered 14, fourteen, and 16, sixteen, in the Little River survey of the tract of land known as Forbes' Purchase; said lot number 14 containing four hundred and seventy-four acres, and lot number 16 containing three hundred and two acres and one-half, or thereabouts, be the same more or less, at the price of eight thousand six hundred and thirty-three dollars and ninety cents; and that he has paid to the said Apalachicola Land Company the sum of four thousand dollars. Now the said company do hereby bind themselves to make, or cause to be made, good and sufficient titles for the said lots or parcels of land to the said Robinson, his heirs or assigns, upon the payment of two thousand three hundred and sixteen dollars and ninety-five cents on the seventeenth day of March, eighteen hundred and thirty-eight, and the sum of two thousand three hundred and sixteen dollars and ninety-five cents on the seventeenth day of March, eighteen hundred and thirty-nine, with interest from date at eight per cent. per annum, for which he has this day given his notes to the trustees of said company; and it is further agreed and understood, that if the said Jonathan Robinson shall desire to pay said notes, or either of them, before they arrive at maturity, he shall be at liberty to do so, and that interest thereon shall cease from the time he shall so pay the same.

In witness whereof the president of the board of directors of said company has in their behalf executed these presents, and the said Jonathan Robinson has also executed the same. Done the seventeenth day of March, one thousand eight hundred and thirty-seven.

R. M. BLATCHFORD,
President of the board of directors.

And the said defendant avers, that at the time of the making of said agreement between the said Jonathan Robinson and the said Apalachicola Land Company, the said Apalachicola Land Company were not, nor are they now, possessed of a good and sufficient title to said tract of land, nor can they make such title to defendant, or to the heirs or as-

signs of said Jonathan Robinson, because there was at the time of the making of said agreement as aforesaid, and is now, a heavy incumbrance hanging over and upon the said tract of land, and against the title of the said Apalachicola Land Company to said tract of land, namely, a conveyance made on the thirteenth day of September, eighteen hundred and twenty from one John Forbes to John Innerarity, by which the said tract of land, known as Forbes' Purchase as aforesaid, was conveyed to the said John Innerarity to secure the payment to the said John Innerarity of two instalments of the sum of twenty-five thousand dollars each, and which said incumbrance was not, at the time of the making of said agreement, nor has the same since been in any manner paid off, satisfied, or in any way liquidated; and this the defendant is ready to verify. Wherefore she prays judgment if the said plaintiffs ought further to have and maintain their aforesaid action thereof against her. STEPHENS & BAKER,

Defendant's attorneys.

And for further plea in this behalf said defendant, by leave of the court first had and obtained, comes and defends the wrong and injury, when, &c., and says the said plaintiffs ought not further to have and maintain their aforesaid action thereof against her, because she says the promissory notes in plaintiffs' declaration mentioned, if any such were made, were given to secure the payment of a part of the purchase money of certain tracts or parcels of land (being part of a certain large tract of land commonly known as Forbes' Purchase) sold by said Apalachicola Land Company to said Jonathan Robinson, by virtue of an agreement in writing, made and entered into between the said Jonathan Robinson and the said Apalachicola Land Company, on the seventeenth day of March, eighteen hundred and thirty-seven, which said agreement is in the words and figures following, namely:

TERRITORY OF FLORIDA,
Gadsden county, sct:

This is to certify, that Jonathan Robinson has this day purchased of the Apalachicola Land Company, lots number 14 fourteen, and 16 sixteen, in the Little River survey, of the tract of land known as Forbes' Purchase, said lot number 14 containing four hundred and seventy-four acres, and lot number 16 containing three hundred and two acres and one-half, or thereabouts, be the same more or less, at the price of eight thousand three hundred and thirty-three dollars and ninety cents, and that he has paid to the said Apalachicola Land Company the sum of four thousand dollars. Now the said company do hereby bind themselves to make, or cause to made, good and sufficient titles for the said lots or parcels of land to the said Jonathan Robinson, his heirs and assigns, upon the payment of two thousand three hundred and sixteen dollars and ninety-five cents, on the seventeenth day of March, eighteen hundred and thirty-eight; and the sum of two thousand three hundred and sixteen dollars and ninety-five cents, on the seventeenth day of March, eighteen hundred and thirty-nine, with interest from date at

eight per cent. per annum, for which he has this day given his notes to the trustees of said company. And it is further agreed and understood, that if the said Jonathan Robinson shall desire to pay said notes, or either of them, before they arrive at maturity, he shall be at liberty to do so, and that interest thereon shall cease from the time he shall so pay the same.

In witness whereof, the president of the board of directors of said company has in their behalf executed these presents, and the said Jonathan Robinson *Robinson* has also executed the same. Done the seventeenth day of March, one thousand eight hundred and thirty-seven.

R. M. BLATCHFORD,
President of the board of directors.

And the said defendant avers, that at the time of the making of said agreement between Jonathan Robinson and the said Apalachicola Land Company, the said Apalachicola Land Company were not, nor are they now, possessed of a good and sufficient title to said tract of land, nor can they make such title to said defendant nor to the heirs or assigns of the said Jonathan Robinson, because defendant avers, that at the time of making said agreement as aforesaid, there was and is now a heavy outstanding incumbrance over and upon said tract of land, and against the title of said company thereto, namely, a certain deed of agreement made and entered into on the twenty-eighth day of November, eighteen hundred and thirty-five, between Peter Mitchel, executor of Robert Mitchel, John Carnochan, trustee of Carnochan and Mitchel, Peter Mitchel, trustee for the creditors of Carnochan and Mitchel, Colin Mitchel, Thomas Vermilya, Benjamin W. Rogers, John Graham, Benjamin Marshal and Richard Carnochan, by his attorney John Carnochan, in which said agreement it is stipulated, among other things that, inasmuch as the said Peter Mitchel holds in capacity of trustee for the creditors of Carnochan & Mitchel, four hundred and twenty thousand undivided acres of the aforesaid tract of land so called Forbes' Purchase, the same shall remain in the hands of the trustee of said company, until a definite arrangement is made between said Carnochan & Mitchel and their said creditors. And the defendant avers, that the said incumbrance has never been paid off, or in any manner satisfied or liquidated, and this she is ready to verify; wherefore she prays judgment if the said plaintiffs ought further to have and maintain their aforesaid action thereof against her.

STEPHENS & BAKER,
Att'ys for defendant.

And for further plea in this behalf the said defendant, by leave of the court first had and obtained, comes and defends the wrong and injury, when, &c., and says the plaintiffs ought not to have and maintain their aforesaid action thereof against her, because she says that the promissory notes in plaintiffs' declaration mentioned, if any such were made, were given to secure the payment of a part of the purchase money of certain tracts or lots of land sold by said Apalachicola Land Company to said Jonathan Robinson, on the seventeenth day of March, eighteen hun-

dred and thirty-seven, by virtue of an agreement in writing made between the said Apalachicola Land Company and the said Jonathan Robinson, in the words and figures following, namely:

TERRITORY OF FLORIDA,
Gadsden county, to wit:

This is to certify, that Jonathan Robinson has this day purchased of the Apalachicola Land Company, lots numbered (fourteen) 14, and 16 (sixteen,) in the Little River survey of the tract of land known as Forbes' Purchase, said lot number fourteen containing four hundred and seventy-four acres, and lot number 16 containing three hundred and two acres and one-half, or thereabouts, be the same more or less, at the price of eight thousand six hundred and thirty-three dollars and ninety cents, and that he has paid to the said Apalachicola Land Company the sum of four thousand dollars. Now the said company do hereby bind themselves to make, or cause to be made, good and sufficient titles for the said lots or parcels of land to the said Jonathan Robinson, his heirs or assigns, upon the payment of two thousand three hundred and sixteen dollars and ninety-five cents, on the *six*teenth day of March, eighteen hundred and thirty-eight, and the sum of two thousand three hundred and sixteen dollars and ninety-five cents, on the seventeenth day of March, eighteen hundred and thirty-nine, with interest from date at eight per cent. per annum, for which he has this day given his notes to the trustees of said company. And it is further agreed and understood, that if the said Jonathan Robinson shall desire to pay the said notes, or either of them, before they arrive at maturity, he shall be at liberty to do so, and interest thereon shall cease from the time he shall so pay the same.

In witness whereof, the president of the board of directors of said company has in their behalf executed these presents, and the said Jonathan Robinson has also executed the same. Done the seventeenth day of March, one thousand eight hundred and thirty-seven.

R. M. BLATCHFORD,
President of the board of directors.

And the defendant avers, that at the time of the making of said agreement, the said Apalachicola Land Company were not, nor are they now, possessed of a good and sufficient title to said tracts or lots of land, nor can they make such title to said defendant, or to the heirs or assigns of said Jonathan Robinson, because she says there was, at the time of the making of the agreement aforesaid, a heavy incumbrance hanging over and upon the said tract of land, and against the title of the said Apalachicola Land Company thereto, namely, a conveyance from one Octavius Mitchel to one John Forbes, of the said land so called Forbes' Purchase, to secure the payment of the sum of twenty-five thousand dollars, a regular certified copy of which is now here shewn to the court, and which has never been satisfied, paid off, or in any manner liquidated, *and this she is ready to verify*; wherefore she prays judgment if the said plaintiffs ought further to have and maintain their aforesaid action thereof against said defendant.

STEPHENS & BAKER, *Att'ys.*

And for further plea in this behalf said defendant, by leave of the court first had and obtained, comes and defends the wrong and injury, when, &c., and says, the plaintiffs ought not to have and maintain their aforesaid action thereof against said defendant, because she says the said promissory notes in plaintiffs' declaration mentioned, if any such were given, were given to secure the payment of a part of the purchase money of certain tracts or lots of land, (which is a part of a certain large tract of land called Forbes' Purchase,) sold by said Apalachicola Land Company to said Jonathan Robinson, on the seventeenth day of March, eighteen hundred and thirty-seven, by virtue of an agreement in writing in the words and figures following, namely:

TERRITORY OF FLORIDA, *Gadsden county, to wit:*

This is to certify, that Jonathan Robinson has this day purchased of the Apalachicola Land Company lots numbered 14 fourteen, and 16 sixteen, of the Little River survey of the tract of land known as Forbes' purchase, said lot number 14 containing four hundred and seventy-four acres, and lot number 16 containing three hundred and two acres and one-half, or thereabouts, be the same more or less, at the price of eight thousand six hundred and thirty-three dollars and ninety cents; and that he has paid to the said Apalachicola Land Company the sum of four thousand dollars. Now the said company do hereby bind themselves to make, or cause to be made, good and sufficient titles for the said lots or parcels of land, to the said Jonathan Robinson, his heirs or assigns, upon the payment of two thousand three hundred and sixteen dollars and ninety-five cents, on the seventeenth day of March, eighteen hundred and thirty-eight, and the sum of two thousand three hundred and sixteen dollars and ninety-five cents, on the seventeenth day of March, eighteen hundred and thirty-nine, with interest from date at eight per cent. per annum, for which he has this day given his notes to the trustees of said company. And it is further agreed and understood, that if the said Jonathan Robinson shall desire to pay said notes, or either of them, before they arrive at maturity, he shall be at liberty to do so, and that interest thereon shall cease from the time he shall so pay the same.

In witness whereof the president of the board of directors of said company has in their behalf executed these presents, and the said Jonathan Robinson *Robinson* has also executed the same. Done the seventeenth day of March, one thousand eight hundred and thirty-seven.

R. M. BLATCHFORD,
President of the board of directors.

And the said defendant avers, that at the time of the making of said agreement, the said Apalachicola Land Company were not, nor are they now, in possession of a good and sufficient title to said tracts or lots of land, nor can they make such titles to the defendant, or to the heirs or assigns of said Jonathan Robinson, (deceased,) because she says there was at the time of the making of said agreement, and is now, a heavy outstanding incumbrance hanging over and upon said tracts of land, namely, a conveyance made on the thirtieth day of April, eighteen hundred and twenty-two, from Octavius Mitchel and wife, of

Pensacola, and John Carnochan and Peter Mitchel, in trust to Robert Mitchel, of Savannah, in Georgia, for the purpose of securing the payment of certain sums of money due to certain individuals and banks therein mentioned, creditors of the said Carnochan & Mitchel, which said deed recites, that the said Octavius Mitchel, at the date thereof, held in trust for John Carnochan and Peter Mitchel, partners, five hundred and twenty thousand acres of land in Forbes' purchase, (subject to the following mortgages, namely, a mortgage to John Forbes, dated the (9th) ninth of September, eighteen hundred and twenty, to secure the sum of seventy-five thousand dollars; one to John Innerarity, made on the thirteenth of September, eighteen hundred and twenty, to secure the payment of five thousand dollars; another to the said John Innerarity, on the thirteenth day of September, eighteen hundred and twenty, to secure the payment of the sum of fifty thousand dollars,) the aforesaid five hundred and twenty thousand acres of land, so held in trust for said Carnochan & Mitchel, to be disposed of as they the said Carnochan & Mitchel should direct; and the said Carnochan and Mitchel, by the said deed of conveyance, direct that the said Robert Mitchel shall hold said land, together with other lands therein mentioned, for the use of said banks and individuals, to be sold, and the money arising therefrom to be paid to them pro rata; and the said defendant avers, that the said incumbrance is still hanging over said tracts of lands, and that the same has never been lifted, satisfied, paid off, or in any manner liquidated, and this she is ready to verify; wherefore she prays judgment if the said plaintiffs ought further to have and maintain their aforesaid action thereof against her.

STEPHENS & BAKER and DUPONT.

And for further plea in this behalf said defendant, by leave of the court first had and obtained, comes and defends the wrong and injury, when, &c., and says, the said plaintiffs ought not further to have and maintain their aforesaid action thereof against said defendant, because she says, that the promissory notes in said plaintiffs' declaration mentioned, if any such were made, were given to secure the payment of the purchase money of certain tracts or parcels of land (which said land is a part of a large tract of land commonly known and designated as Forbes' purchase) sold by the said Apalachicola Land Company to said Jonathan Robinson, by virtue of an agreement in writing made on the seventeenth day of March, eighteen hundred and thirty-seven, between the said Jonathan Robinson and the said Apalachicola Land Company, which is in the words and figures following, namely:

"TERRITORY OF FLORIDA,
Gadsden county, to wit:

This is to certify, that Jonathan Robinson has this day purchased of the Apalachicola Land Company lots numbered 14 (fourteen) and 16 (sixteen) in the Little River survey of the tract of land known as Forbes' purchase; said lot number 14 containing four hundred and seventy-four acres, and lot number 16 containing three hundred and two acres and

one-half, or thereabouts, be the same more or less, at the price of eight thousand six hundred and thirty-three dollars and ninety cents; and that he has paid to the said Apalachicola Land Company the sum of four thousand dollars. Now the said company do hereby bind themselves to make, or cause to be made, good and sufficient titles [to said] lots or parcels of land to the said Jonathan Robinson, his heirs and assigns, upon the payment of two thousand three hundred and sixteen dollars and ninety-five cents on the seventeenth day of March, eighteen hundred and thirty-eight, and the sum of two thousand three hundred and sixteen dollars and ninety-five cents on the seventeenth day of March, eighteen hundred and thirty-nine, with interest from date at eight per cent. per annum, for which he has this day given his notes to the trustees of said company; and it is further agreed and understood, that if the said Jonathan Robinson shall desire to pay said notes, or either of them, before they arrive at maturity, he shall be at liberty to do so, and that interest thereon shall cease from the time he shall so pay the same.

In witness whereof the president of the board of directors of said company has in their behalf executed these presents, and the said Jonathan Robinson *Robinson* has also executed the same. Done the seventeenth day of March, one thousand eight hundred and thirty-seven.

R. M. BLATCHFORD,
President of the board of directors.

And the defendant avers, that at the time of the making of said agreement as aforesaid the said Apalachicola Land Company were not, nor are they now, possessed of a good and sufficient title to said tract of land, nor can they make such title to the defendant, or to the heirs or assigns of the said Jonathan Robinson, because she says there were, at the time of the making of said agreement, and are now, heavy outstanding incumbrances upon said land; in consequence of which said outstanding incumbrances the said Apalachicola Land Company had not, at the time of the making said agreement, nor have they now, any good and sufficient title to said tract of land; and this she is ready to verify. Wherefore she prays judgment if the said plaintiffs ought further to have or maintain their aforesaid action thereof against her.

STEPHENS, BAKER & DUPONT,
Attorneys.

And for a further plea in this behalf the said defendant comes and defends the wrong and injury, when, &c., (by leave of the court first had and obtained,) and says, the plaintiffs ought not further to have and maintain there aforesaid action thereof against the said defendant, because she says there was no consideration given by the said Apalachicola Land Company to the said Jonathan Robinson for the said promissory notes in said declaration mentioned, for that the said notes, if any such were given, were given by the said Jonathan Robinson to the said Apalachicola Land Company to secure the payment of a part of the purchase money of certain tracts or lots of land, sold by the said Apalachicola Land Company to said Jonathan Robinson, by virtue of an agree-

ment in writing made on the seventeenth day of March, eighteen hundred and thirty-seven, in the words and figures following, namely:

TERRITORY OF FLORIDA,
Gadsden county, to wit:

This is to certify, that Jonathan Robinson has this day purchased of the Apalachicola Land Company lots numbered 14 (fourteen) and 16 (sixteen) in the Little River survey of the tract of land known as Forbes' Purchase; said lot number 14 containing four hundred and seventy-four acres, and lot number 16 containing three hundred and two acres and one-half, or thereabouts, be the same more or less, at the price of eight thousand six hundred and thirty-three dollars and ninety cents, and that he has paid to the said Apalachicola Land Company the sum of four thousand dollars. Now the said company do hereby bind themselves to make, or cause to be made, good and sufficient titles to said lots or parcels of land to the said Jonathan Robinson, his heirs or assigns, upon the payment of the sum of two thousand three hundred and sixteen dollars and ninety-five cents on the seventeenth day of March, eighteen hundred and thirty-eight, and the sum of two thousand three hundred and sixteen dollars and ninety-five cents on the seventeenth day of March, eighteen hundred and thirty-nine, with interest from date at eight per cent. per annum, for which he has this day given his notes to the trustees of said company; and it is further agreed and understood that if the said Jonathan Robinson shall desire to pay said notes, or either of them, before they arrive at maturity, he shall be at liberty to do so, and that interest shall cease from the time he shall so pay the same.

In witness whereof the president of the board of directors of said company has in their behalf executed these presents, and the said Jonathan Robinson *Robinson* has also executed the same. Done the seventeenth day of March, one thousand eight hundred and thirty-seven.

R. M. BLATCHFORD,
President of the board of directors.

And the said defendant avers that the consideration for which said notes were given has entirely failed, and this she is ready to verify. Wherefore she prays judgment if the plaintiffs ought further to have and maintain their aforesaid action thereof against her.

STEPHENS & BAKER & DUPONT,
For defendant.

Afterwards, to wit, on the 29th day of November, 1843, the original agreement heretofore referred to was filed in said case, which is in words following:

TERRITORY OF FLORIDA,
Gadsden county, to wit:

This is to certify, that Jonathan Robinson has this day purchased of the Apalachicola Land Company lots numbered 14, fourteen, and 16, sixteen, in the Little River survey of the tract of land known as Forbes'

Purchase; said lot number fourteen containing four hundred and seventy-four acres, and lot number 16 containing three hundred and two acres and a half, or thereabout, be the same more or less, at the price of eight thousand six hundred and thirty-three dollars and ninety cents, and that he has paid to the said Apalachicola Land Company the sum of four thousand dollars. Now the said company do hereby bind themselves to make, or cause to be made, good and sufficient titles for the said lots or parcels of land to the said Jonathan Robinson, his heirs or assigns, upon the payment of two thousand three hundred and sixteen dollars and ninety-five cents on the seventeenth day of March, eighteen hundred and thirty-eight, and the sum of two thousand three hundred and sixteen dollars and ninety-five cents on the seventeenth day of March, eighteen hundred and thirty-nine, with interest from date at eight per cent. per annum, for which he has this day given his notes [to] the trustees of said company; and it is further agreed and understood, that if the said Jonathan Robinson shall desire to pay said notes, or either of them, before they arrive at maturity, he shall be at liberty to do so, and that interest thereon shall cease from the time he shall so pay the same.

In witness whereof the president of the board of directors of said company has in their behalf executed these presents, and the said Jonathan Robinson *Robinson* has also executed the same. Done the seventeenth day of March, one thousand eight hundred and thirty-seven.

R. M. BLATCHFORD,
President of the board of directors.

And on the same day, to wit, the twenty-ninth of November, 1843, the said plaintiffs, by their attorneys, filed their demurrer in said suit, which is in words following, to wit:

CURTIS & GRISWOLD, the trustees, &c.
vs.
ROBINSON'S EXECUTOR.

And the said plaintiffs, as to the other pleas of defendant, except the first plea of non-assumpsit, say, that the same and the matters therein contained, as the same are therein set forth, are not sufficient in law to bar or preclude said plaintiffs from having and maintaining their said action against said defendant, and that the said plaintiffs are not bound by the law of the land to answer the same; and for special ground of demurrer to the pleas alleging a failure of consideration and no consideration, plaintiffs say, that the same are not sworn to according to law, nor filed at the appearance term of said suit, and as to them and the other pleas they say they are defective, illegal, and insufficient, and this they are ready to verify; wherefore they pray judgment, &c.

WESTCOTT & BALTZELL, *P. Q.*

Whereupon the said defendant by her attorneys filed her joinder on the same day, which is in words following:

And the said defendant comes and says, that her said pleas, and the matters therein contained, are sufficient in law to bar and preclude the

said plaintiffs from having and maintaining their aforesaid action thereof against her as aforesaid; and this she is ready to verify, &c.

DUPONT, STEPHENS & BAKER,
For defendant.

Afterwards, and on the same day, to wit, on the 29th day of November, 1843, at the regular November term, 1843, of said court, the following entry was made of record in said case, to wit:

LEWIS CURTIS AND GEORGE GRISWOLD, trustees of the Apalachicola Land Company, plaintiffs,
vs.
SARAH LINES, executrix of the last will and testament of Jonathan Robinson, deceased, defendant.
} T. D. No. 31.

This day came the parties by their attorneys, and the plaintiffs move to strike out the several pleas filed by defendant on the 8th July, 1843, which motion the court overruled; whereupon the plaintiffs filed their demurrer to the several pleas, except the first plea of non-assumpsit, and the said defendant filed her joinder thereto, and said demurrer was argued by counsel. The counsel for the plaintiffs on the argument abandoned their demurrer to the 4th and 5th pleas filed in said case, being the general pleas of no consideration and want of consideration, filed 6th February, 1843; after said argument the court overruled said demurrer to the other pleas filed by said defendant, and ordered the plaintiffs to reply instanter, and that judgment be entered in default thereof on said demurrer against them. Whereupon, plaintiffs having declined replying to said pleas, except the 4th and fifth pleas aforesaid, in order to appeal from said judgment to the court of appeals, it is considered by the court that said demurrer be overruled, and that said defendant do recover of said plaintiffs the sum of fifteen $\frac{26}{100}$ dollars *dollars* for her costs and charges in and about her defence expended. Plaintiffs then appealed in open court from said judgment to the court of appeals.

Afterwards, to wit, on the 6th day of December, 1843, a writ of error was issued in said case from the office of the clerk of the court of appeals, which writ, with the return thereon endorsed, is in words and figures following, viz:

In the name and by the authority of the Territory of Florida, to the judges of the superior court for the middle district of Florida, Gadsden county, greeting:

Because in the record and proceedings, and also in the rendition of the judgment in our said court at November term, 1843, on the twenty-ninth day of November, in the year 1843, in a certain action on the case upon promises, instituted in our said court against Sarah Lines, executrix of Jonathan Robinson, deceased, by Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, manifest error hath

happened to the great damage of the said Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, as by their complaint we have understood. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the said Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, in this behalf, command you, that the record and proceedings aforesaid, with all things touching the same, you under your seal, distinctly and plainly, send to the judges of our court of appeals, at the city of Tallahassee, on or before the first day of the next term, so that the judges, the record and proceedings aforesaid being inspected, may further cause to be done therein what of right, and according to law, ought to be done.

Witness the honorable William Marvin, presiding judge of our said court of appeals, at Tallahassee, this 6th day of December,
[SEAL.] 1843, and the 68th year of American independence.

R. T. BIRCHETT, *Clerk.*

Endorsed—Come to hand Dec. 6, 1843, and served a copy thereof Dec'r 6th, 1843, on said Sarah Lines, and read the same to her personally, and delivered the original to Isaac R. Harris, esq., clerk of Gadsden county superior court.

J. G. CAMP, *Mar.*
By J. W. POINDEXTER, *D. M.*

I, Isaac R. Harris, clerk of the superior court for the county of Gadsden, district of Middle Florida, do hereby certify, that the foregoing is a true and correct transcript of the record and proceedings had in a certain suit pending in said court, between Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, plaintiffs, and Sarah A. Lines, executrix of Jonathan Robinson, deceased, defendant.

In testimony whereof I have hereto set my hand and affixed the seal of said court at office, this 6th day of December, A. D. 1843,
[SEAL.] and 68th year of American independence.

ISAAC R. HARRIS, *Clerk.*

Endorsed—"Filed 28 Dec., 1843. N. P. B. D. C."

And afterwards, to wit, on the 4th day of January, A. D. 1844, came the said plaintiffs in error, by their attorneys Westcott and Baltzell, and filed their assignment of errors in the words and figures following, to wit:

LEWIS CURTIS AND GEORGE GRISWOLD, trustees of the Apalachicola Land Company, plaintiffs in error,
vs.
SARAH A. LINES, executrix of Jonathan Robinson, deceased, defendant in error.

On writ of error to Gadsden superior court, in the middle district.

The plaintiffs in error assign as errors in said record and judgment, and for which said judgment should be reversed—

1. That the several pleas filed by the defendant in the court below (except the plea of non-assumpsit and the 4th and 5th pleas filed 6th Feb., 1843, being the general pleas of no consideration and want of consideration) were and are wholly informal, irregular, and insufficient, and the matters therein contained, if true, could not be legally pleaded in said case to said declaration, and that the court improperly overruled the demurrer thereto filed by plaintiffs, and gave judgment for the defendant thereon.

2. That the judgment of the court below upon the said record should have been for plaintiffs and not for defendant, and said judgment is wholly irregular and illegal.

Whereupon plaintiffs pray judgment may be reversed, and said case remitted to the court below, with directions, &c.

WESTCOTT & BALTZELL,
For plaintiffs in error.

Endorsed—"Filed 4 January, 1844. R. T. B. C."
Also—"Copy served on me, 4 January, 1844. Acknowledged.
THOMPSON & HAYNES,
For defendant in error.

And afterwards, to wit, at a court of appeals for the Territory of Florida, continued and held at the court house, in the city of Tallahassee, on Tuesday, the ninth day of January, A. D. 1844, the following order was entered of record in said cause:

CURTIS & GRISWOLD, trustees, &c., appellants,
vs.
SARAH LINES, executrix, appellee.

This cause was this day partly heard upon the transcript of the record of the judgment aforesaid, and the arguments of counsel, and is continued till to-morrow for a further hearing thereof.

And at the next day, to wit, at a court of appeals for the Territory of Florida, continued and held at the court house, in the city of Tallahassee, on Wednesday, the 10th day of January, A. D. 1844, the following order was entered of record in said cause:

CURTIS & GRISWOLD, trustees, &c., appellant,
vs.
SARAH LINES, executrix, appellee.

This cause was this day further argued by Mr. Thompson for plaintiff in error, and the further argument hereof postponed.

And at the next day, to wit, at a court of appeals for the Territory of Florida, continued and held at the court house, in the city of Tallahassee, on Thursday, the 11th day of January, A. D. 1844, the following order was entered of record in said cause:

CURTIS & GRISWOLD, trustees, &c., appellant,
vs.
SARAH LINES, executrix, appellee.

This cause was this day fully heard upon the transcript of the record

of the judgment aforesaid, and the arguments of counsel, but because the court is not yet advised of its judgment to be given in the premises, time is taken to consider thereof.

And at another day, to wit, at a court of appeals for the Territory of Florida, continued and held at the court house, in the city of Tallahassee, on Monday, the 12th day of February, A. D. 1844, the following final judgment was pronounced and entered of record in said cause:

LEWIS CURTIS AND GEORGE GRISWOLD, trustees of the Apalachicola Land Company, plaintiffs,
vs.
SARAH A. LINES, executrix of Jonathan Robinson, deceased, defendant.

Upon writ of error to a judgment of the superior court for the middle district, Gadsden county, rendered on the 29th November, 1843, whereby it was considered that the said defendant in error recover of the said plaintiff in error the sum of $15 26 dollars for her costs and charges expended.

This day came the parties by their attorneys, and thereupon the transcript of the record of the judgment aforesaid being seen and inspected, and said parties having been fully heard by counsel, it seems to the court here that there is no error in said judgment. Therefore it is considered by the court that the judgment aforesaid be affirmed, and that the defendant recover against the plaintiffs her costs by her about her defence in this behalf expended, which is ordered to be certified to the court below.

And afterwards, to wit, on the 23rd April, A. D. 1844, came the said plaintiffs in error, by Thomas Baltzell, their attorney at law and in fact, to sue out a writ of error from the Supreme Court to said court of appeals, and for that purpose filed their bond, approved by "S. J. Douglas," one of the judges of the *judges of the* court of appeals, together with a power of attorney to said Thomas Baltzell, esq., which said bond and power of attorney are in the words and figures following, to wit:

"Know all men by these presents, that we, Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, and James E. Bettner and Thomas Baltzell, are held and firmly bound unto Sarah A. Lines, executrix of Jonathan Robinson, deceased, in the just and full sum of two hundred dollars; to the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Signed and sealed this twenty-second day of April, in the year of our Lord one thousand eight hundred and forty-four.

The condition of this obligation is such, that whereas the said Curtis and Griswold, trustees as aforesaid, are about to sue out a writ of error to a judgment of the court of appeals of the Territory of Florida, in a case lately determined therein at the January term 1844, in favor of said Sarah A. Lines, as executrix as aforesaid, affirming a judgment in her

behalf of the superior court of the county of Gadsden, in the said Territory, returnable to the next term of the Supreme Court of the United States.

Now if the said Curtis and Griswold, trustees as aforesaid, shall prosecute their said writ with effect, and answer all such costs as may on an affirmance of the judgment be judged or decreed to the respondent in error, then this obligation to be void, otherwise to be and remain in full force and virtue.

LEWIS CURTIS, [SEAL.]
By Thomas Baltzell, his attorney.
GEORGE GRISWOLD, [SEAL.]
By Thomas Baltzell, his attorney.
THOMAS BALTZELL, [SEAL.]
JAS. E. BETTNER. [SEAL.]

Approved. S. J. DOUGLAS,
Judge Court of Appeals.

Endorsed—"Filed 23 April, 1844. N. P. B. D. C.

Power.

Whereas in a certain cause, pending in the court of appeals of the Territory of Florida, wherein Lewis Curtis and George Griswold, trustees of the Apalachicola Land Company, are plaintiffs, and Lines, administratrix of Jonathan Robinson, is defendant, the said court has lately made and pronounced a judgment or decree adverse to the said plaintiffs, from which said judgment or decree the said plaintiffs are desirous of appealing to the Supreme Court of the United States. Now, therefore, know all men by these presents, that we, the said Lewis Curtis and George Griswold, the said plaintiffs, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint, Thomas Baltzell, of Tallahassee, in the Territory of Florida aforesaid, our true and lawful attorney, for us and in our names to enter and prosecute an appeal from the judgment or decree aforesaid to the Supreme Court of the United States; and also for us and in our names to make, seal, and deliver such appeal bond or bonds as may be required by law and the course and practice of the court, for the purpose of entering and prosecuting such appeal, and generally for us and in our names to do all other necessary legal acts in the premises, for the purposes aforesaid, as fully as we could do personally.

In witness whereof we have hereunto set our hands and seals this fourth day of March, in the year of our Lord one thousand eight hundred and forty-four.

LEWIS CURTIS, [SEAL.]
GEORGE GRISWOLD. [SEAL.]

Sealed and delivered in presence of—
J. D. B. CURTIS,
H. H. WARDEN.